

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KEVIN PAUL O'CONNELL,

Plaintiff,

v.

J. CLARK KELSO, et al.,

Defendants.

No. C 11-0396 JSW (PR)

ORDER OF TRANSFER

(Docket Nos. 4, 5, 7)

Plaintiff, a California prisoner incarcerated at Kern Valley State Prison ("KVSP"), has filed this pro se civil rights complaint under 42 U.S.C. § 1983.

When, as here, jurisdiction is not founded solely on diversity, venue is proper in the district in which (1) any defendant resides, if all of the defendants reside in the same state, (2) the district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought. 28 U.S.C. § 1391(b). Where a case is filed in the wrong venue, the district court has the discretion either to dismiss the case or transfer it to the proper federal court "in the interest of justice." 28 U.S.C. § 1406(a). Venue may be raised by the court *sua sponte* where the defendant has not yet filed a responsive pleading and the time for doing so has not run. *Costlow v. Weeks*, 790 F.2d 1486, 1488 (9th Cir. 1986).

Plaintiff's claims arise out of events occurring at the KVSP in Delano, California, where Plaintiff is incarcerated. Defendants are employees located at KVSP and in

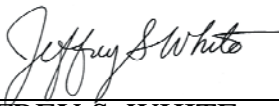
1 Sacramento, both of which lie within the venue of the United States District Court for the
2 Eastern District of California.

3 Accordingly, IT IS ORDERED in the interest of justice, and pursuant to 28 U.S.C.
4 § 1406(a), that this action be TRANSFERRED to the United States District Court for the
5 Eastern District of California. In light of the transfer, the Court will not resolve
6 Plaintiff's request for leave to proceed *in forma pauperis* or motion for appointment of
7 counsel, and the Clerk shall terminate docket numbers 5 and 7 from this Court's docket.
8 Plaintiff's motion for an extension of time within which to file a complaint (docket
9 number 4) is GRANTED.

10 The Clerk of the Court shall transfer this matter forthwith.

11 IT IS SO ORDERED.

12 DATED: March 24, 2011

13 
14 _____
15 JEFFREY S. WHITE
16 United States District Judge
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

KEVIN P. OCONNELL,
Plaintiff,

Case Number: CV11-00396 JSW

CERTIFICATE OF SERVICE

v.

J. CLARK KELSO, et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 24, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Kevin P. Oconnell
K89321
K.V.S.P.
P.O. Box 5104
Delano, CA 93216

Dated: March 24, 2011



Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk